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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re E.S. et al., Persons Coming Under the
Juvenile Court Law.

B270077

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

(Los Angeles County
Super. Ct. No. DK01944)

Plaintiff and Respondent,

v.

VANESSA S. et al.,

Defendants and Appellants.

APPEAL from an order of the Superior Court of Los Angeles County, D. Zeke Zeidler, Judge. Affirmed.

Cristina Gabrielidis, for Defendant and Appellant Vanessa S.

Christopher R. Booth, under appointment by the Court of Appeal, for Defendant and Appellant Adrian S.

Mary C. Wickham, County Counsel, R. Keith Davis, Acting Assistant County Counsel, and Aileen Wong, Deputy County Counsel, for Plaintiff and Respondent.

After the juvenile court terminated their parental rights as to one set of children, and on the eve of termination as to a second set, Vanessa S. (mother) and Adrian S. (father) sought nonpermanent placement orders. Although acknowledging they were unable to provide a home for the children, who had long enjoyed a stable living arrangement with mother's relatives, the parents argued that benefits arising from the parental relationship outweighed any benefit gained by adoption.

The juvenile court found the parents failed to establish that reunification or a nonpermanent placement would be in the best interests of the children. We affirm.

BACKGROUND

The family comprises mother, father, children E.B.S., J.S., D.S., and E.A.S., now ages six, four, four, and three, respectively (the older children), and children L.S. and M.S., now ages two and one, respectively (the younger children). The older children have resided in an adoptive foster home with mother's grandparents for the last three years. The younger children were each placed at birth in an adoptive foster home with mother's great-aunt and great-uncle. Since these placements, the parents have never had more than semi-weekly monitored visitation.

Mother has a seventh child, Cassidy S., whose father is Kevin S. The family came to the attention of the Department of Children and Family Services (DCFS or the department) in July 2013, when Kevin S.'s wife reported that Cassidy S., who resided with mother and father and the older children but often visited Kevin S., was suffering from a severe scabies (mite) infestation that mother had neglected. The department then began a years-long interaction with the family that was interrupted for a time by the family's disappearance and descent into homelessness.¹

In October 2013, mother's relatives tracked down the family to a filthy motel room in Pico Rivera. Mother had had an epileptic seizure shortly before her relatives arrived, and the older children, all in soiled diapers, were unfed and dirty, and lacked

¹ Mother never attempted to retrieve Cassidy S. from Kevin S. after the referral, and the juvenile court ordered the child placed with Kevin S. and the referral closed as to her. That placement is not at issue in this appeal.

needed supplies such as food and diapers. Father initially resisted the relatives' intervention but fled the motel when informed that law enforcement had been summoned. The maternal grandmother reported that mother was mentally "slow" and suffered epileptic seizures but refused to take anti-seizure medication whenever she was pregnant. She was transported to the hospital, where she was prescribed anti-seizure medication that she refused to take.

The department determined the older children were at high risk of substantial physical danger and severe emotional damage due to their parents' neglect. They were detained, declared to be wards of the court, and placed with mother's grandparents. The children were reported to suffer from anemia and other medical conditions and, as to J.S. and D.S. (who are twins), developmental delays, including hearing problems, inability to speak, and missed developmental milestones.

In February 2014 and February 2015, mother gave birth to the younger children, who were detained at birth and placed with mother's great-uncle and great-aunt.

Over time, the juvenile court sustained DCFS petitions as to all the children and ordered that the older children be placed with the maternal grandparents and the younger with the maternal great-aunt and great-uncle. The parents were offered reunification services as to the older children only. (See Welf. & Inst. Code, § 361.5, subd. (b)(10) [court may bypass reunification services where a parent previously failed to reunify with another child/sibling or to make reasonable subsequent efforts to address problems that led to removal].)²

The results were mixed at first. Mother and father visited the children semi-regularly but often arrived late for visits, canceled them, or failed to show up. During most visits, mother was ambivalent about changing the children's diapers or cleaning up after them, appeared unable to supervise all six of the minors, frequently failed to engage with them, and sometimes absented herself without warning. She appeared to have little desire to bond with the younger children. Mother was invited to attend the children's

² Further statutory references are to the Welfare and Institutions Code.

many medical appointments over the years, but attended only one. Father visited the children semi-consistently once a week (although he was allotted two visits per week), but sometimes played too roughly or failed to interact with them.

By early 2014, mother had only sporadically enrolled in programs ordered by the court and was inconsistent in her weekly drug and alcohol testing, passing some tests, missing some, and failing some. However, by late 2014 she had completed a 12-week parenting program, a 12-week individual counseling program, and a 12-week alcohol/drug counseling and education program, and by mid-2015 she was consistently testing negative for alcohol and drugs (although she missed four tests).

Father admitted he used marijuana for medicinal purposes and admitted having abused alcohol and methamphetamines since he was a teenager. He stated he had quit his job in order to take care of the children and insisted he should have authority to decide what medical attention mother and the children should receive. In January 2014, father was convicted of burglary and possession of drugs for sale, and was incarcerated. He was convicted again in March 2015 for drug possession and for violating probation. He was released in October 2015. Father failed to comply with substance abuse and testing services.

Mother and father lived sometimes together and sometimes apart, neither obtaining employment or a residence.

Mother's relatives reported she was unable to conduct such basic tasks as changing diapers or supervising the children. She had been overwhelmed in 2013 when she had custody of the older children and continued to be overwhelmed during visitation. The relatives reported they were "scared for the children to be in the custody of the parents."

Nevertheless, it is undisputed that by 2016 mother had completed all court-ordered programs, repeatedly tested negative for alcohol and drugs, and consistently visited the children twice a week for two hours each visit. During visits, which were always monitored, she would change diapers, cook lunch, play with the children, engage them in arts and crafts, and read to them. The children would run to the parents at the beginning

of visits and hug them and say they had missed them. They sometimes asked when they could come live with mother and sometimes cried when the parents left.

Mother's grandparents cared for the older children, addressed their educational and medical needs, and planned to adopt them, as the children had lived in their home for years and formed close bonds with them. Mother's great-aunt and great-uncle did the same for the younger children. All the relatives agreed to maintain ongoing family ties. DCFS reported that the parents had not assumed parental roles and the children were highly adoptable.

The juvenile court eventually terminated reunification services and parental rights as to the older children.

In February 2016, father, mother, and a paternal grandmother filed section 388 petitions seeking expanded visitation and placement of the children with the paternal grandmother.

At the permanency hearing for the younger children, mother requested that all the children be returned to her. The juvenile court found the children were likely to be adopted, "the parental role and relationship created by the parents' ongoing visitation" did not outweigh the benefits of permanence and adoption, and "return to the parents would be detrimental." Accordingly, the court denied the section 388 petitions and mother's request for reunification and terminated parental rights as to the younger children.

Mother and father appealed.

DISCUSSION

Mother and father argue the juvenile court abused its discretion in refusing to implement a plan of guardianship or long term foster care. We disagree.

Section 366.26 governs a juvenile court's selection and implementation of a permanent plan for a dependent child. Once reunification services have been terminated, "[f]amily preservation ceases to be of overriding concern Then, the focus shifts from the parent's interest in reunification to the child's interest in permanency and stability.'" (*In re Richard C.* (1998) 68 Cal.App.4th 1191, 1195.) Section 366.26,

subsection (c)(1) provides that if the court finds by clear and convincing evidence that “it is likely the child will be adopted, the court shall terminate parental rights and order the child placed for adoption.” (§ 366.26, subd. (c)(1); see *In re Autumn H.* (1994) 27 Cal.App.4th 567, 573 [“Adoption, where possible, is the permanent plan preferred by the Legislature”].) The statutory preference in favor of adoption will prevail unless the parent opposing termination can demonstrate that an enumerated statutory exception applies, for example that a compelling reason exists for determining that termination of parental rights would be detrimental to the child because the “parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.” (§ 366.26, subd. (c)(1)(B)(i).)³

The “benefit” prong of this exception requires that the parent prove his or her relationship with the child ““promotes the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents.”” (*In re Marcelo B.* (2012) 209 Cal.App.4th 635, 643; accord, *In re Amber M.* (2002) 103 Cal.App.4th 681, 689.) The juvenile court “balances the strength and quality of the natural parent/child relationship in a tenuous placement against the security and the sense of belonging a new family would confer. If severing the natural parent/child relationship would deprive the child of a substantial, positive emotional attachment such that the child would be greatly harmed, the preference for adoption is overcome and the natural parent’s rights are not terminated.” (*In re Derek W.* (1999) 73 Cal.App.4th 823, 827.) “The factors to be considered include: ‘(1) the age of the child, (2) the portion of the child’s life spent in the parent’s custody, (3) the positive or negative effect of

³ Section 366.26 provides in pertinent part that the juvenile court shall terminate parental rights and order a child placed for adoption unless it “finds a compelling reason for determining that termination would be detrimental to the child due to one or more of the following circumstances: [¶] (i) The parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.” (§ 366.26, subd. (c)(1)(B)(i).)

interaction between the parent and the child, and (4) the child’s particular needs.’” (*In re Helen W.* (2007) 150 Cal.App.4th 71, 81.)

Even frequent and loving contact between a child and a parent may not suffice, without more, to establish the significant parent-child relationship required under section 366.26, subdivision (c)(1)(B). (*In re Beatrice M.* (1994) 29 Cal.App.4th 1411, 1418-1419.) A “*parental* relationship is necessary for the exception to apply, not merely a friendly or familiar one” because “[i]t would make no sense to forgo adoption in order to preserve parental rights in the absence of a real parental relationship.” (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1350.)

We review the juvenile court’s factual determination—whether a beneficial parent-child relationship exists—under the substantial evidence standard. (*In re K.P.* (2012) 203 Cal.App.4th 614, 622.) We review the court’s discretionary decision—whether the relationship constitutes a compelling reason for determining that termination of parental rights would be detrimental to the child—under the abuse of discretion standard. (*Ibid.*)

Any interested person may petition the juvenile court for modification of a prior dependency order. (§ 388, subds. (a), (c).) To obtain the modification, the petitioner must show by a preponderance of the evidence that there has been a change of circumstances sufficient to warrant the changed order, and also that the new order would be in the child’s best interests. (*In re Kimberly F.* (1997) 56 Cal.App.4th 519, 532-535.) We review the juvenile court’s denial of a section 388 petition for abuse of discretion. (*In re Jasmon O.* (1994) 8 Cal.4th 398, 415.) “We must uphold the juvenile court’s denial of [a] section 388 petition unless we can determine from the record that its decisions ““exceeded the bounds of reason. When two or more inferences can reasonably be deduced from the facts, the reviewing court has no authority to substitute its decision for that of the trial court.””” (*In re Brittany K.* (2005) 127 Cal.App.4th 1497, 1505.)

Here, after removal, the familial relationship never progressed beyond semi-weekly monitored visitation. Although mother’s visitation became more regular in the end, family members and social workers observed that she and father struggled in

managing six very young children—especially the two youngest, with whom the parents appeared not to have bonded. No evidence suggested the parents attended to the children’s physical care, substantial nourishment, or medical needs; assisted in managing the children’s school or personal lives; or participated in such hour-to-hour and day-to-day interactions as the children enjoyed with mother’s relatives. On the contrary, only mother’s relatives, the prospective adoptive parents, filled the roles of parents. Mother and father thus failed to establish the parent-child relationship exception of section 366.26 applied to their relationship with the children. The juvenile court could therefore reasonably conclude the permanency and stability the children enjoyed with mother’s relatives outweighed the benefit they would receive from reunification with mother and father. The court accordingly acted within its discretion when it declined to order reunification, denied the section 388 petitions, and terminated parental rights.

Mother argues legal guardianship or long-term foster care, rather than adoption, would preserve the parental bond and better serve the children’s interests in this case. They would run to her at the beginning of visits and hug her and call her “Mom,” she notes, and they said they missed her, sometimes asked when they could come live with her, and sometimes cried when she left. Mother argues these actions and emotions show a strong bond.

We agree that Mother made great strides during the three-year dependency period and formed a strong bond with the children. However, a strong bond, without more, does not suffice. An exception to the statutory preference in favor of adoption will be justified only when the parental bond promotes the well-being of the child to such a degree as to outweigh the benefit of a permanent home with new parents. The benefit obtained from the strong emotional bond during two-hour, semi-weekly visits did not outweigh the benefit conveyed by day-to-day attention to the children’s global needs. We therefore cannot say the juvenile court exceeded the bounds of reason in concluding mother’s bond with the children did not outweigh the benefit they would obtain from permanent placement. These children have long cried out for consistency and permanency. Adoption is the preferred plan in California to achieve these results. Accordingly, the

juvenile court was within its discretion to select adoption as the permanent plan and terminate mother's and father's parental rights. Its orders are therefore affirmed.

DISPOSITION

The juvenile court's orders are affirmed.

NOT TO BE PUBLISHED.

CHANEY, Acting P. J.

WE CONCUR:

JOHNSON, J.

LUI, J.